

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

FIRST-CLASS PACKAGE SERVICE (FCPS)  
SERVICE STANDARD CHANGES, 2021

Docket No. N2021-2

**REPLY BRIEF OF THE UNITED STATES POSTAL SERVICE**

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### **ATTESTATION OF WORD COUNT**

The Postal Service attests that this brief contains 6,601 words, excluding the table of contents and table of authorities.

## **I. STATEMENT OF THE CASE AND STATEMENT OF POSITION**

The Initial Brief of the United States Postal Service (“Postal Service”) summarizes the evidence of record, the scope of the Commission’s responsibilities under 39 U.S.C. § 3661, and the legal standards applicable to the exercise of those responsibilities here.<sup>1</sup> The Postal Service Brief explains why the Commission should conclude that the changes in the nature of service under review (the “Standards”) are consistent with relevant policies of Title 39, United States Code.

Those principal issues will not be revisited here; rather, this Reply Brief will address the contentions raised by other parties in their Briefs and Statements of Position (“SOPs”) submitted by August 20. As demonstrated below, none of those parties’ contentions provides a basis for the Commission to conclude that the proposed First-Class Package Service (“FCPS”) service standards are inconsistent with the applicable policies of Title 39, or that the Postal Service should not promptly proceed to implement those Standards.<sup>2</sup>

In their Briefs and SOPs, various parties make arguments either expressing their interpretations or characterizations of applicable law and policy or asserting that the Commission’s advisory opinion should include an assessment of issues and policies beyond the limited scope of review under § 3661. But proceedings under § 3661(c) are conducted in order for the Commission to fulfill its limited role as an advisor to the Postal Service, which otherwise has broad authority to operate the national postal

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<sup>1</sup> Unless otherwise indicated, references to parties’ “Briefs,” “Statements of Position” or “SOPs” refer to Briefs and SOPs filed in this proceeding. Citations referencing only a party refer to that party’s Brief or SOP, e.g., “USPS at 5” would refer to the Postal Service’s Initial Brief at 5.

<sup>2</sup> The fact that the Postal Service has not chosen to respond to every argument presented in each party’s Brief or SOP should not be interpreted as agreement with points not addressed herein.

system. The Commission's primary role in this proceeding is to issue an advisory opinion addressing the "specific changes proposed by the Postal Service in the nature of postal services." 39 C.F.R. § 3020.102(a). The advisory opinion is not binding on the Postal Service, and the Postal Service ultimately decides whether to implement the proposal after considering the Commission's advice. See Order No. 2080, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. § 3661, PRC Docket No. RM2012-4 (May 20, 2014) at 8; Postal Regulatory Comm'n, Press Release, Procedural Overview of the Advisory Opinion Process (Mar. 24, 2021) ("By law, the Commission's final opinion is advisory in nature. The law does not give the Commission authority to veto service changes. As a result, the Postal Service is not required to implement or take any further action with regard to the Commission's opinion.").

In pursuing our Request for an advisory opinion, the Postal Service has fully complied with the regulatory requirements applicable to this change in service standards. The other parties that have submitted Briefs in this docket have not made compelling arguments to the contrary. At the conclusion of this process, for the reasons set forth in the Postal Service's Brief and herein, the Postal Service urges the Commission to issue a favorable advisory opinion finding that the Standards comply with the policies of Title 39.

## **II. DISCUSSION OF EVIDENCE, REASONS, AND AUTHORITIES**

Ample evidence supports a finding that the proposed Standards comport with the policies of Title 39 and that the Postal Service has employed sound methodologies to develop them. The Standards will enable the Postal Service to provide more consistent and reliable service, realize cost savings, increase utilization of transportation capacity, and improve transportation network efficiency. It will also enable future improvements in the Postal Service's mail processing network.

Moreover, the proposed Standards are an essential component of the Postal Service's comprehensive 10-year strategic plan to create a fully sustainable service for the future, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence* (the "Plan"). When considering the intervenors' speculative and hypothetical criticisms, the Commission should also view the Standards in the larger context of the Plan.

### **A. The *Status Quo* Is Unsustainable and Reform is Essential**

The Postal Service must provide service that is "prompt, reliable, and efficient" with "prompt and economical" transportation, while also "emphasiz[ing] . . . control of costs." See 39 U.S.C. §§ 101, 403, 3633, 3661. Many parties fixate narrowly on delivery speed and relegate reliability, efficiency, economy, and cost control to second-tier policy objectives. Yet none of the applicable statutes offers a basis for such a ranking. The Postal Service *must* balance achievement of all our policy objectives in a manner that is operationally and financially sustainable. That cannot be done under current service standards, which impose and reinforce transportation network

inefficiencies and high costs by compelling dependence on more expensive and less reliable air transportation for a significant amount of FCPS volume, and which prevent the Postal Service from leveraging strategies to increase delivery-time reliability and reduce transportation costs.

The Postal Service's *status quo* is financial instability that threatens the continued fulfilment of the Postal Service's public service mission to the American people. See Order No. 4257, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, PRC Docket No. RM2017-3 (Dec. 1, 2017) at 274 ("the Postal Service was not financially stable in the medium and long-term timeframes"); see also *id.* at 165-78. As the PR recognizes, "the Postal Service's financial situation is precarious and . . . efforts to decreasing costs and improving efficiency must be implemented" and the Postal Service's proposal "appears reasonable." See PR at 11. Moreover, as all of the intervenors and commenters have noted, the Postal Service's *status quo* in recent years has also been unreliable service. Reform is essential to address the Postal Service's financial instability and ensure more reliable service going forward.

#### **B. The Postal Service's Proposal Is Consistent with Statutory Requirements**

The Postal Service's proposed service standards reasonably balance the various statutory policies set forth in Sections 101, 403, 3633, and 3661(a) of Title 39. Notwithstanding misplaced reliance on various statutes quoted in the States' SOP, the Postal Service's proposed changes for FCPS standards are consistent with the applicable statutory requirements. As a threshold matter, the States' extensive quotations from Section 3691 (States at 4) only serve to confuse the actual issues at



hand, because that statute simply does not apply to this case. By its express terms, Section 3691 concerns only “service standards for market-dominant products.” 39 U.S.C. § 3691(a). Accordingly, the States’ lengthy discussion of that statute’s mandatory “four objectives” and mandatory “eight specified factors” that must be taken into account for market-dominant products is entirely irrelevant.

Indeed, the States themselves later acknowledge (States at 5) they are aware that FCPS is now classified as a competitive, not market-dominant, product. As such, Section 3691 has no role to play in the consideration of the service standard changes for FCPS. Moreover, the States’ baseless supposition that “[i]t is not clear whether the Postal Service intends to change the service standards” with respect to certain market-dominant products that it lists (e.g., Alaska Bypass Service) is both speculative and wrong. See States at 5. The instant case concerns changes only for FCPS, which is not a market-dominant product. Section 3691 is inapplicable.

The States’ reliance on Section 101(e) of Title 39 is likewise misplaced. The States rely on this subsection for the premise that the most expeditious delivery is required for “important letter mail,” and then claim that the Postal Service’s supposed prioritization of packages over First-Class Mail (“FCM”) conflicts with this statute. See States at 4, 7. Contrary to the States’ claim, however, the Postal Service’s Plan makes explicit that the Postal Service intends to improve reliability for both FCM and FCPS, not favoring the latter at the expense of the former. *E.g.*, Plan at 6, 8, 24, 27, 30, 34, 40.

More importantly, Section 101(e) does not apply to FCPS, but is expressly applicable only to “important letter mail,” a subset of all letter mail. See USPS at 20-21. In any case, the Postal Service has a broad range of package products that customers

can choose from based on their preferences regarding delivery speed and price. Speedier service remains available through the Priority Mail and Priority Mail Express products, neither of which is FCPS.

In any event, in the present docket, the Commission is reviewing proposed changes to the service standards only for FCPS, not for FCM. The Commission has already extensively reviewed and issued an advisory opinion concerning the service standard changes for FCM and Periodicals in Docket No. N2021-1. To the extent that the proposed FCPS changes at issue in the present Docket No. N2021-2 would result in *improvements* to the speed of delivery for FCPS, that is a basis on which to laud the changes, not criticize them. The States' real criticism is that they do not believe the *FCM* standards are sufficiently speedy, but that is not at issue in this case. The same States already raised those same concerns about FCM in Docket No. N2021-1. The Commission fully considered their concerns and issued its advisory opinion in that case. The present FCPS case is not the appropriate forum to re-litigate the FCM case.

The States' reliance on Section 101(b) is likewise unavailing. See States at 4, 10, 12. Section 101(b) requires the Postal Service to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." First, the proposed Standards, which are neutral and do not distinguish between rural and other communities, will ensure regular and effective access to all communities, including those in rural areas or where post offices are not self-sustaining. USPS-T-1 at 40. Second, the Standards are measured only after acceptance at a postal facility, and the proposal would not alter that *status*

*quo*. Accordingly, Section 101(b), and whether post offices are present in a community, are irrelevant to this proceeding.

Further, the States inaccurately suggest that the Postal Service has not complied with the CARES Act, selectively citing (at 11 n.50) only the Postal Service's most recent discovery response on this topic. In fact, however, that recent response was only a follow-up to the earlier responses filed in this docket in which the Postal Service had already extensively addressed its past and future compliance with the CARES Act. See Tr. 1/218-19; Tr. 1/91. However, when considering the broader record in this proceeding, the Postal Service's explanation as to its consistency with the CARES Act was direct and robust.

Through the course of the ongoing pandemic, as part of the Postal Service's steadfast commitment to delivering medications throughout the nation, Postal Service management continuously reviewed pharmaceutical package service performance, and worked closely with all mail-order prescription mailers to improve overall service. In addition, weekly operational meetings were established with pharmaceutical mailers to provide updates on service conditions and process improvements. More fundamentally, as an organization, the Postal Service has undertaken efforts throughout all levels to ensure the timely processing, dispatching, and delivery of pharmaceutical shipments. These efforts included, to the extent that personnel in the field had some tangible basis to view particular mail pieces as likely constituting a pharmaceutical shipment, attempts to expedite handling of such pieces. See Tr. 1/218-19.

Nor will implementation of the proposed FCPS service standard changes affect the current practices employed to adhere to the CARES Act mandate. To the extent

feasible, as described above, the Postal Service will continue to give priority to the delivery of postal products (including FCPS) for medical purposes. *Id.* Moreover, under the contemplated service standard changes, almost all pharmaceutical volume presently subject to a two-day service standard will remain as two-day; in addition, a majority of pharmaceutical volume presently subject to a three-day service standard will remain as three-day. See USPS-T-1 at 36.

In sum, the proposed Standards are consistent with all applicable statutory requirements.

**C. The Proposed Service Standard Changes are not Unduly nor Unreasonably Discriminatory**

APWU Witness Morrison's rebuttal testimony purports to demonstrate that the proposed changes will not yield uniform impacts across the contiguous States. APWU T-1. The States similarly assert that geographically disparate impacts of the sort contemplated by Morrison's testimony violate the Postal Service's legal obligation—embodied in Section 403(c)—“to not ‘make any undue or unreasonable discrimination among users of the mail.’” States at 11. Neither Morrison nor the States, however, engage with the Commission's precedent interpreting this statute.

Pursuant to Commission precedent, in order for a violation of Section 403(c) to occur, three conditions must be met: (1) one or more mailers must be offered less favorable rates or terms and conditions than those offered to other mailers; (2) the two sets of mailers must be similarly situated; and (3) there must be no rational or legitimate basis for differing treatment. Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, PRC Docket No. N2021-1 (July 20, 2021), at 170

(citing Order No. 718, Order on Complaint, PRC Docket No. C2009-1 (Apr. 20, 2011), at 28).

The Commission, in its recent advisory opinion on the proposed service standard changes for FCM, set a low bar for the first Section 403(c) factor, suggesting that geographically-tiered service standards by their very nature confer “less favorable rates or terms and conditions” on some customers. See Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, PRC Docket No. N2021-1 (July 20, 2021), at 175. We disagree with this articulation. We maintain that the relevant question regarding this factor is not where customers live, but rather how far their FCPS items travel; and that, when service standards apply uniformly nationwide based on that objective criterion, no violation of the first Section 403(c) factor has occurred. Such is the case under both the existing and proposed service standards, as all mailers will be offered and will receive the same level of service, no matter where such mailers live in the contiguous United States, and the postage corresponding to a distance-based zone is and will remain the same. See USPS at 23-24. In any case, the Commission’s determination that “[i]t is enough, to satisfy this prong of the test that a mailer be able to show a different level of service received by two mailers,” Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, PRC Docket No. N2021-1 (July 20, 2021), at 175, is arguably confined by its terms to the context of First-Class Mail and not to the context of FCPS, a service that does not carry a uniform rate, and for which distance-based zones already exist.

Regarding the second Section 403(c) factor, customers are “similarly situated” who ship packages between comparable ZIP Code pairs. Thus, the fact that the service

standards apply uniformly to all FCPS users demonstrates that no similarly situated customers are treated differently under these standards. See USPS at 24.

Furthermore, the focus on service standards obscures the extent to which actual service performance may differ from those standards in two ways. First, a putative extension of service standards would not necessarily alter the service actually received by customers, since some FCPS products experience slower service than their current service standards would suggest. Second, the Postal Service can and does outperform service standards. If anything, downgrading service standards in some instances and making wider use of more reliable surface transportation should provide more slack, opportunities for consolidated trips, and chances for the Postal Service to exceed service standards and improve the actual service that our customers receive. In this way, the proposed changes will increase the likelihood that similarly situated customers receive the same real-world level of service for FCPS products.

It is also important to note that in the aforementioned advisory opinion, the Commission rejected arguments purporting to infer, from the mere likelihood of geographical disparities, the “similar situatedness” of geographically distinct mailers. While the Commission did not discount the possibility that some affected mailers might prove “similarly situated,” it withheld judgment as to whether that possibility would be realized, deeming such speculation impractical absent more empirical data. See Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, PRC Docket No. N2021-1 (July 20, 2021), at 170-79. It follows that, under Commission precedent, whether shippers are “similarly situated” for Section 403(c) purposes is a fact-driven, nuanced, and complex inquiry—one that is best determined on a case-by-

case comparison of the relevant characteristics of the mailers. See Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, PRC Docket No. N2021-1 (July 20, 2021), at 175-76. Furthermore, witness Morrison provides impacts on certain geographic regions, but her results do not differ materially from the current situation, where some customers based on their geographic location in the United States have a greater proportion of their volume travel longer distances, and thereby incur additional time in transit. It is therefore not possible to conclude that the customers affected by the proposed changes (many of whom will presumably send packages across widely varying origin-destination pairs) are “similarly situated.”

The States identify veterans and rural customers as vulnerable populations threatened by the proposed changes. They do not, however, cite any record evidence to support those allegations or in any way quantify the harms that the changes might allegedly inflict on these populations. With regard to veterans, the States assert that the proposed changes “will require millions of veterans to adjust or pay nearly twice as much (or more) for faster alternatives—if that option is even available to them.” They do not, however, provide evidence to support this claim, which appears grounded in speculation, and which is in any case belied by record evidence that the proposed changes will have a negligible impact on pharmaceutical customers generally—a prediction appraised as “reasonable” by the Public Representative. PR at 21. Likewise, the States present no evidence quantifying the number of rural customers who, under the proposed changes, will see lengthened service standards for FCPS; neither do they prove, or even attempt to show, that the proposed changes will affect rural customers disproportionately. Instead, they cite to APWU witness Morrison’s testimony, which

confines its analysis to states (and to ZIP Codes within select states) on which the proposed changes may have disparate impacts. States at 12. On the other hand, we have provided evidence that the proposed changes will have similar volume impacts on rural and urban customers. See Tr. 1/97; USPS-LR-N2021-2-NP16. As such, the concerns expressed by the States for the welfare of veterans and rural customers seem inapposite to the Section 403(c) determination. Nevertheless, we note that insofar as select subsets of populations—including veterans and rural customers—currently experience delivery delays and other service failures, they stand to benefit from the proposed changes, which aim to provide more reliable service and, thus, to meet customer expectations on a more consistent basis.

Finally, the proposed service standards do not violate the third Section 403(c) factor because any conceived differing treatment among similarly situated mailers or mail recipients rationally advances legitimate postal policies, so it cannot be said that there is no rational or legitimate basis for any differing treatment, to the extent it exists at all. Specifically, service standards based on drive time from origin to destination are rationally related to the Postal Service's statutory mandate to provide adequate, efficient, reliable, and economical postal services. See USPS at 24-25. In this regard, both courts and the Commission allow broad latitude to differentiate service in furtherance of the Postal Service's statutory responsibility to provide universal service in an economical and efficient manner. See, e.g., *Egger v. USPS*, 436 F. Supp. 138, 142 (W.D. Va. 1977) (declaring it "obvious that the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable"); *UPS Worldwide Forwarding, Inc. v. U.S. Postal Serv.*, 66 F.3d 621, 634–



35 (3d Cir. 1995) (noting that Postal Service may treat mailers differently so long as that different treatment is reasonable); Order No. 4294, Order Granting the Postal Service's Motion to Dismiss, PRC Docket No C2019-1 (Dec. 12, 2018), at 10 ("the Postal Service may differentiate among customers where the differences have a rational basis"); Order No. 5491, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, PRC Docket No. C2020-2 (Apr. 28, 2020), at 9.

The Public Representative supports this conclusion, acknowledging that "shifting First-Class Package Service volume from high cost and volatile air transportation to more reliable and efficient surface transportation, with lower costs, appears reasonable," PR at 11. The Public Representative further remarks that "the preferred use of surface transportation over air transportation in specific lanes appears reasonable based on the supporting data provided by the Postal Service." *Id.* at 13. Finally, in a recent advisory opinion concerning similar changes to the service standards for FCM and Periodicals, the Commission found that the record "d[id] not support a conclusion that the Postal Service is manifestly unreasonable or arbitrary in its proposal," and that as a result, the changes at issue did not facially violate Section 403(c). Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals, PRC Docket No. N2021-1 (July 20, 2021), at 179. The same reasoning should apply here.

**D. The Postal Service's Market Research Adequately Considered the Effect on Both Retail and Commercial Customers**

The Postal Service reaffirms its confidence in the assessment that FCPS volumes will not be materially affected after the proposed changes to FCPS, which

accords with the record evidence. A number of steps were taken to assess the impact of the proposed changes to FCPS on shippers and to estimate any change in FCPS volumes that the proposed changes might cause. The Postal Service carefully considered trends in the overall U.S. parcel market, analyzed years of shipper satisfaction data, and deeply considered the important role that FCPS plays in the Postal Service's portfolio of shipping products and in the U.S. parcel market overall. Additionally, the Postal Service retained an independent third party, The Colography Group, to undertake a detailed survey ("The FTC Survey") of current FCPS-Commercial shippers, including companies representing the pharmaceutical and healthcare industry, to directly understand why those shippers select FCPS and how they would respond to the proposed changes to FCPS. The findings of The FTC Survey and conclusions of the detailed market research both indicate that the Postal Service will maintain current FCPS volumes due to the overall product value proposition of service, highly competitive prices, and improved reliability in meeting service expectations, and that these benefits will flow to shippers across all industry segments.

Moreover, the Public Representative's criticism that the Postal Service's market research does not reflect both retail and commercial FCPS customers is unfounded. See PR at 19-21. The record evidence supports the Postal Service's conclusion that the Postal Service will maintain current FCPS-Retail volumes after the proposed service standard changes are implemented. FCPS-Retail comprises approximately 9 percent of total FCPS volume. See Tr. 1/171; USPS-LR-N2021-2-NP4. As the Postal Service's market research clearly demonstrates, FCPS offers a compelling value proposition to both retail and commercial customers based on the product's service, reliability, and

competitive price. Furthermore, shippers across the United States have convenient access to FCPS-Retail through the Postal Service's extensive network of retail locations. According to the Q1 FY2021 Brand Health Tracker, the top driver of satisfaction for users of USPS shipping products is "is reliable." Given the prominent role that reliability plays in shipper satisfaction, the Postal Service submits that the enhanced on-time delivery reliability enabled by these service standard changes will improve shipper satisfaction, which will directly appeal to retail customers.

Additionally, for the shippers of the relatively small amount of FCPS-Retail volume that may have extended delivery times due to these service standard changes and that may require faster delivery, the Postal Service will continue to offer its Priority Mail product, which, like FCPS-Retail, is accessible through the Postal Service's extensive network of retail locations. Packages weighing less than one pound are eligible to be shipped using either the FCPS or Priority Mail products. In FY 2020, 21.1 percent of all retail pieces weighing less than one pound across the FCPS and Priority Mail products were shipped using the Priority Mail-Retail product. See Tr. 1/171; USPS-LR-N2021-2-NP4. This demonstrates that Priority Mail has been, and will continue to be, a viable alternative for retail customers depending on particular shippers' desired product attributes, such as faster delivery time. Relative to other market alternatives, the entire FCPS value proposition of price, access, and service, with enhanced reliability, will continue to resonate for all shippers of lightweight parcels.

**E. Other Parties Have Failed to Present a Credible Challenge to the Postal Service's Projected Cost Savings and Transportation Modeling**

The Postal Service's projected cost savings and transportation model include reasonable and appropriate inputs and factors. One important indication of the reasonableness of the Postal Service's position is the absence of any alternative savings projections offered by other parties to this proceeding, notwithstanding the opportunity to do so. The Commission should, accordingly, confirm that the projected cost savings and transportation model are reasonable and support approval of the Standards.

**1. The Postal Service Will Realize Projected Cost Savings**

In her initial Brief, the Public Representative summarizes the salient facts regarding the Postal Service's cost savings presentation. First, the Public Representative agrees that, in general terms, the Postal Service would likely experience cost savings from the contemplated changes in transportation operations embodied in the instant proposal. PR at 22-23. Second, she states that the methodology employed to calculate the projected cost savings is sound. *Id.* at 23. Third, she finds that the cost savings analysis presented is reasonable from a business perspective:

Moving volume from air transportation which is volatile, at times unreliable, and expensive, to surface transportation, which is less likely to experience disruptions, is more reliable, and has lower costs, is sensible.

*Id.* And lastly, she concludes that, given the Postal Service's financial situation, any potential cost savings, even in small amounts, that could be said to be accurately estimated should be encouraged. *Id.*

Nevertheless, despite walking to the brink of an endorsement of the cost savings projected by the Postal Service, the Public Representative retreats with a general admonition to “tread lightly” with respect to reliance on these projections. *Id.* at 23-24. In essence, her argument boils down to the observation that past experience suggests any projections of this nature are imprecise and subject to error. That, however, is virtually a tautology with respect to all projections of uncertain future events. Yet neither the Public Representative nor any other party has provided any alternative basis for making their own cost saving projections, or even recommended specific adjustments in the estimates presented by witness Kim based on the Postal Service’s well-documented methodology. The projections by witness Kim are no less reliable than the similar ones presented by witness Whiteman—based on the same basic methodology and intended to fulfill the same function—in Docket No. N2021-1.

In their discussion of this issue, the States likewise fail to proffer any alternative projection of cost savings. States at 8-9. While citing statements made by the Commission in its Advisory Opinion in Docket No. N2021-1 to the effect that the Postal Service’s methodology (employed in that case and this one) produces estimates that “may be inflated,” the States offer no basis to quantify any potential inflation.<sup>3</sup> Indeed, rather than even attempting to quantify any alternative cost savings estimate, the States proceed directly to a suggestion that the Commission, in lieu of a favorable advisory opinion on the instant proposal, should instead recommend that the Postal Service seek public service appropriations pursuant to Section 2401(b)(1) of Title 39, on the theory

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<sup>3</sup> The NALC Statement of Position (August 19, 2021) likewise makes reference to the Advisory Opinion in Docket No. N2021-1, but also fails to present any concrete alternative savings estimates in this proceeding.

that the statutory amount eligible to be appropriated pursuant to such a request would be more than ten times the amount of the cost savings estimated by witness Kim.

States at 9.

In make this claim, however, the States grossly mischaracterize the testimony of witness Kim, by ignoring major components of her analysis. Their pleading cites page 9 of her revised testimony as the source for what they refer to as a “paltry \$42 million” in annual savings. States at 8. On page 10 of her revised testimony, however, witness Kim summarized the net financial impact as \$42 million, *plus* the potential for additional amounts ranging from \$77 million to \$214 million from opportunities to reduce charters and streamline the Network Distribution Center network. Without explanation, the States ignore these additional savings amounts, which exceed by a substantial degree the \$42 million estimate they describe so disparagingly.

The suggestion by the States to seek public service appropriations, moreover, is a total red herring. First of all, any potential determination by the Postal Service to seek public service appropriations would be entirely unrelated to the determination to proceed with the instant proposal. There is no logical or legal linkage between the estimated cost savings and the statutory appropriation amount, and no reason why the Postal Service would need to forgo the former in order to pursue the latter.

Consequently, this suggestion by the States is plainly outside the scope of this proceeding. Consistent with the Commission’s rules, the Order established procedures in this docket limiting the scope of this proceeding to the specific changes proposed by the Postal Service in its Request. Order No. 5920 (June 21, 2021) at 9. The Commission has already indicated that it will not be distracted from the task at hand to

opine on the merits of alternative proposals such as that advanced by the States with respect to public service appropriations. *Id.* In that regard, that suggestion has no bearing on the evaluation of the specific cost savings estimated by witness Kim, which are based directly on the opportunity for the expected operational adjustments afforded by the contemplated change in FCPS service standards.

## **2. The Postal Service's Model Is Accurate and Reasonably Informs Operational Changes**

The parties have questioned the validity of the projections derived from the Postal Service's transportation network modeling. See NALC at 2-3; PR at 15-18. The NALC takes issue with the Postal Service's baseline model not reflecting the actual network, and the Public Representative notes the complexities involved in the modeling and its heuristic nature. See NALC at 2-3; PR at 17. The Postal Service does not, however, claim that its model captures all details and intricacies of the current network—as Witness Hagenstein testified, the model is not intended to be dispositive and should be considered a decision-support tool, rather than a decision-making tool. See USPS-T-1 at 32, 38.

That said, however, the Postal Service utilized appropriate data sources and modeling techniques to assess the proposed changes to the service standards for FCPS and the effects that such changes will have on transportation time and efficiencies in the transportation network. *Id.* at 38. The model develops shipment routings based on reasonable data, operating parameters, and constraints in the actual network. Projected benefits were based on a modeled baseline comparing current service standards and proposed service standards to better understand potential

impacts and benefits. In fact, use of the optimized baseline, rather than an actual baseline, provides a more conservative cost savings projection. See USPS-T-1 at 18-38.

In short, the proposed Standards are based on a reasonable model. Although, like any simulation, the model may not reflect 100 percent accuracy vis-à-vis the actual current network, the model comparison does reveal significant benefits of the added transit windows afforded by the proposed service standards. *Id.*

#### **F. Other Criticisms Are Unpersuasive and Lack Evidentiary Support**

##### **1. The Service Standard Changes for FCPS and FCM are Interdependent**

The Public Representative suggests that the service standard changes for FCM should be implemented before implementing the service standard changes for FCPS as a way of assessing the potential impact of the changes on FCPS. See PR at 25-26. But, as Witness Hagenstein testified, the projected benefits to FCPS cannot be obtained in isolation from the proposed changes to the FCM service standards. USPS-T-1 at 37. The projected benefits to FCPS would not accrue as projected if FCPS service standards remained the same while FCM service standards changed. In particular, the projected increased FCPS efficiency of surface routings is based on an ability to move FCPS volume through the surface transportation network along with FCM volume. See *id.* Indeed, the Public Representative recognized that “the proposed service standard changes for First-Class Package Service are entirely intertwined with the proposed service standard changes for First-Class Mail and Periodicals presented in Docket N2021-1.” *Id.* at 25.



## **2. The Nature of the Transportation Network Reasonably Precludes Pilot Testing**

The Public Representative questions the Postal Service's ability to achieve its reliability, efficiency, and cost savings projections because the proposed service standards were not subject to operational or pilot testing. See PR at 12-14. However, the Postal Service transportation network relies on multiple products from multiple origins to build density to develop and sustain cost efficiency. Given this complexity and interconnectivity, attempting to pilot test the proposed FCPS service standard changes would be unrealistic and unreasonable.

## **3. The Postal Service's Service Performance Targets are Realistic and Appropriate**

While the Postal Service appreciates the Public Representative's recognition of the long-term potential for achieving 95 percent FCPS on-time service performance, the Postal Service has also made clear its intent to achieve 95 percent FCPS on-time service performance in the near-term, enabled not merely by the proposed service standard changes, but also by processing and network changes that the Postal Service expects to make by the end of FY 2022. See Tr. 1/134 ("The intent is to achieve 95 percent on-time performance by the end of FY 2022. The processing and the network changes planned to enable 95 percent on-time performance are expected to be implemented by the end of FY 2022."); see also Tr. 1/56-57, 62, 70 (identifying other steps needed to meet 95 percent target, including staffing changes and additional processing equipment that will take place near the time of the proposed implementation and evolve through FY 2022).

Of course, results expected from network changes cannot occur until after the changes are made, and near-term results do not mean instant results. However, a recognition that results will not be instant and will occur after necessary network and other changes are made does not imply an admission that performance targets are unreliable. It simply shows the Postal Service is taking a realistic view of the situation. Indeed, “the Postal Service sought to establish realistic targets based on actual operating conditions for FY2021, and consistent with that principle recently made clear its intent to set interim targets for First-Class Mail and Periodicals as it moves forward with implementing revised service standards for those products.” See Tr. 1/135. A similar approach is anticipated for FCPS.

#### **4. Publishing the Proposed Changes in the Federal Register Would Be Duplicative and Unnecessary**

The States argue that, by declining to issue a rulemaking for the proposed changes, the Postal Service has “deprived the public both of an opportunity to comment directly to the Postal Service and of an explanation should the Postal Service proceed with adopting the changes.” States at 13-14. The States further contend that the instant proceeding does not provide “an adequate substitute, as the Postal Service’s decision to file critical information about the nature and anticipated impact of the Request under seal has undermined the ability of the public to evaluate the proposed changes—much less meaningfully participate in the proceedings.” *Id.* at 14.

The complaint about whether the public has had a meaningful opportunity to participate in these proceedings is curious, coming as it does from parties that chose not to intervene (despite the opportunity to do so under the Commission’s procedures)

and that made no effort to seek access to the Postal Service's non-public library references. Nor is it likely that the Public Representative—who is tasked with representing the public in these proceedings and has access to the non-public materials—would agree that the interests of the public have not been meaningfully addressed. Of course, the mere existence of the States' Statement of Position undermines their contention that the public had no opportunity to “comment directly” on these proceedings.

In any case, a proposed rulemaking is, in this instance, legally unnecessary. Other proposed service standards—including those, to which the States alluded, for FCM and Periodicals—involved market dominant products covered by Section 3691, which specifically requires that such service standards be established and revised “by regulation.” No analogous statutory requirement exists for competitive products like FCPS. This reflects the fact that competing alternatives allow market forces to decide whether customers are being well-served. It also confers on the Postal Service greater flexibility in how it manages its array of its competitive products. See Postal Regulatory Comm'n, Report on Universal Postal Service and the Postal Monopoly 194 (2008) (noting that, while both market-dominant and competitive products are covered by the universal service obligation, the Postal Service has a broader range of mechanisms to adjust prices and service for competitive products).

### **III. STATEMENT OF PROPOSED FINDINGS AND CONCLUSIONS**

Based on the record, in addition to the proposed findings and conclusions in the Initial Brief (see USPS at 27-30), the Commission should find the following:

1. The intervenors failed to submit market research regarding customer preferences, either to support their contentions or refute the Postal Service's findings.
2. The intervenors failed to submit probative, material evidence regarding likely customer effects of the Standards, either to support their contentions or refute the Postal Service's findings.
3. The intervenors' criticisms of the Postal Service's modeling and research rely primarily on anecdotal statements and conjecture, unsupported by reliable predictive modeling.
4. The Postal Service was the only party to submit reliable, probative, and material evidence regarding customer preferences.
5. The Postal Service was the only party to submit probative and material data based on reliable predictive modeling regarding the effects of the Standards.
6. The Postal Service's model is accurate and reasonably informs operational changes.
7. The Postal Service's use of the optimized baseline model, rather than an actual baseline, provides a more conservative cost savings projection.
8. Arguments offered in initial Briefs and other pleadings criticizing the Postal Service's reasonable estimates of expected additional cost savings from

implementation of the current proposal provide no sound basis to challenge those estimates, which are the only ones on the record.

9. Given the complexity and interconnectivity of the Postal Service transportation network, which relies on multiple products from multiple origins to build density to develop and sustain cost efficiency, attempting to pilot test the proposed FCPS service standard changes or to apply them in only limited geographies would be unrealistic and unreasonable.
10. The Postal Service's near-term service performance targets are realistic and appropriate.

In sum, the intervenors and other commenters are quick to criticize the Postal Service's research and modeling, but fail to offer any legitimate alternatives. On the basis of these findings as supported by the record and the authorities discussed, the Commission should reach the conclusions of law set forth herein and in the Initial Brief. USPS at 30-32.

#### **IV. CONCLUSION**

For the foregoing reasons and those in the Initial Brief, the Postal Service respectfully requests that the Commission issue a favorable advisory opinion endorsing the Standards and finding that they comply with the policies of Title 39.

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